

_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR SUBSTITUTE SERVICE OF CERTAIN NOTICES, INCLUDING NOTICES OF TERMINATION OF RESIDENTIAL AND COMMERCIAL LEASES, AND JUDICIAL ORDERS BY LEAVING A COPY OF THE NOTICE OR ORDER AT A RESIDENCE OR PLACE OF BUSINESS; AND AMENDING SECTIONS 25-3-101, 25-3-105, 25-3-301, 70-24-108, 70-26-205, 70-27-110, 70-27-114, AND 70-33-106, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 25-3-101, MCA, is amended to read:

"25-3-101. Definitions. As used in parts 2 and 1 through 3 of this chapter, the following definitions apply:

(1) "Notice" includes all papers and orders, ~~(except process)~~, required to be served in any proceeding before any court, board, or officer or required by law to be served independently of ~~such~~ the proceeding.

(2) "Process" includes all writs, warrants, summonses, and orders of courts of justice or judicial officers."

Section 2. Section 25-3-105, MCA, is amended to read:

"25-3-105. Person serving process -- penalty for obstruction -- exception. (1) A process server registered under Title 37, chapter 60, a licensed attorney, or a sheriff, constable, coroner, elisor, or other government employee who is acting in the course of the person's employment while serving process is a public servant for the purpose of determining the offense of obstructing a public servant as provided in 45-7-302.

(2) A person who obstructs a person serving process is guilty of obstruction of a public servant and is punishable as provided in 45-7-302. An obstruction occurs if a person with whom a notice is left pursuant to [section 4] willfully fails to expeditiously deliver the notice to the person to whom the notice is directed.

(3) An unregistered person who serves 10 or fewer services of process in a calendar year, as provided in 25-1-1101(1), is not acting as a public servant."

Section 3. Section 25-3-301, MCA, is amended to read:

"25-3-301. Time and manner of return. (1) The sheriff or other person serving a summons or other

process or order required by any of the provisions of law, issued for any of the courts of this state, shall make due and legal return of the service and file the return with the clerk of the court in which the action or proceeding is pending. The return must be made within 10 days after making the service if the service was made in the county in which the action or proceeding is pending and within 20 days after making the service when the service was made outside of the county in which the action or proceeding is pending. Any failure to make and file the return may be punished as a contempt of court.

(2) When process or a notice is returnable to another county or was forwarded under 25-3-201, the sheriff or a registered process server may enclose a return of process or notice in an envelope addressed to the officer who sent it and deposit it in the post office, postage prepaid.

(3) In compliance with the provisions of subsection (1) and in lieu of returning a summons, other process, or order to the clerk of court, the sheriff or levying officer may enclose the return of the summons, process, or order in an envelope, postage prepaid, and deposit it in the post office addressed to the officer, agent, or attorney who sent it.

(4) In the case of service of a notice served pursuant to [section 4], the sheriff, registered process server, or other person who serves the notice shall state in the return the name of the person with whom the notice was left and the relationship of that person to the person to whom the notice was directed."

NEW SECTION. Section 4. Substitute service of notice by leaving at residence or place of employment -- exceptions -- definition. (1) In addition to any other method of service of a notice as provided by statute or as provided by rule adopted by the Montana supreme court, and except as otherwise provided in this section, service within this state of a notice may be made by leaving a copy of the notice with any person 18 years of age or older and of suitable discretion who:

(a) in the case of service at a residence, resides at the address of the person designated in the notice; or

(b) in the case of service at a place of business, is employed at the place of business.

(2) Service of a notice may not be made pursuant to subsection (1)(b) to a person employed at a place of business unless the subject matter of the action, proceeding, or other matter for which the notice was issued directly and substantially involves the business where the notice is to be left.

(3) It is the duty of a person with whom the notice is left pursuant to this section to deliver the notice to the person to whom the notice is directed in an expeditious manner. The sheriff, registered process server, or

1 other person serving the notice shall inform the person with whom the notice is left of the duty under this section
2 to deliver the notice to the person to whom the notice is directed in an expeditious manner and that a failure to
3 deliver the notice in an expeditious manner may constitute obstruction of a public servant, as prohibited by
4 25-3-105.

5 (4) Service of a notice as provided in this section does not apply to service of a temporary restraining
6 order or injunction or to service of a petition for dissolution of marriage or a response to a petition.

7 (5) As used in this section, "notice" has the meaning provided in 25-3-101.
8

9 **Section 5.** Section 70-24-108, MCA, is amended to read:

10 **"70-24-108. What constitutes notice.** (1) A person has notice of a fact if:

11 (a) the person has actual knowledge of it;

12 (b) in the case of a landlord, it is delivered at the place of business of the landlord through which the
13 rental agreement was made; or

14 (c) in the case of a landlord or tenant, it is delivered in hand to the landlord or tenant or mailed with a
15 certificate of mailing or by certified mail to the person at the place held out by the person as the place for receipt
16 of the communication or, in the absence of a designation, to the person's last-known address. If notice is made
17 with a certificate of mailing or by certified mail, service of the notice is considered to have been made upon the
18 date 3 days after the date of mailing.

19 (d) in the case of notice by a landlord to a tenant of termination of a rental agreement pursuant to
20 70-24-422, notice is served pursuant to [section 4].

21 (2) Notice received by an organization is effective for a particular transaction from the time it is brought
22 to the attention of the individual conducting that transaction and, in any event, from the time it would have been
23 brought to the individual's attention if the organization had exercised reasonable diligence."
24

25 **Section 6.** Section 70-26-205, MCA, is amended to read:

26 **"70-26-205. Notice required to terminate lease.** (1) A hiring of real property for a term not specified
27 by the parties is presumed to be renewed as stated in 70-26-204 at the end of the term implied by law unless one
28 of the parties gives notice to the other of ~~his~~ the intention to terminate the hiring at least as long before the
29 expiration ~~thereof~~ of the implied term as the term of the hiring itself, not exceeding 1 month.

30 (2) In the case of termination of a lease by a landlord, notice of termination may be served pursuant to

1 [section 4].

2 ~~(2)(3)~~ Subsection (1) does not apply to real property leased under an arrangement governed by chapter
3 24 of this title."

4
5 **Section 7.** Section 70-27-110, MCA, is amended to read:

6 **"70-27-110. Service of notice -- how made.** (1) The notices required by 70-27-108 may be served;
7 ~~either:~~

8 (a) by delivering a copy to the tenant personally;

9 (b) if ~~he be the tenant is~~ absent from ~~his the tenant's~~ place of residence and ~~from his~~ usual place of
10 business, by leaving a copy with some person of suitable age and discretion at either place and sending a copy
11 through the mail addressed to the tenant at ~~his the tenant's~~ place of residence; ~~or~~

12 (c) by serving the notice pursuant to [section 4]; or

13 ~~(c)(d)~~ if ~~such the~~ place of residence and business cannot be ascertained or a person of suitable age or
14 discretion ~~there~~ cannot be found there, then by affixing a copy in a conspicuous place on the property and also
15 delivering a copy to a person ~~there~~ residing there if ~~such the~~ person can be found and also sending a copy
16 through the mail addressed to the tenant at the place where the property is situated.

17 (2) Service upon a subtenant may be made in the same manner."
18

19 **Section 8.** Section 70-27-114, MCA, is amended to read:

20 **"70-27-114. Summons -- contents -- service.** (1) The summons must:

21 (a) state the parties to the proceeding, the court in which the proceeding is brought, the nature of the
22 action in concise terms, and the relief sought; and

23 (b) notify the defendant to appear and answer within 10 days of service and that the relief sought will be
24 taken against the defendant if the defendant does not appear.

25 (2) The summons must be directed to the defendant and must be served and returned in the same
26 manner as a summons in civil actions is served and returned.

27 (3) The summons must be served personally upon the defendant if the defendant can be found with due
28 diligence within the state, or if the defendant cannot be found with due diligence within the state, the summons
29 must be served in the same manner as notices are required to be served in 70-27-110, except that the summons
30 may not be served as provided in [section 4].

(4) Upon the return of a summons issued under this chapter that was not served or not served in time, the plaintiff may have a new summons issued, as if no previous summons had been issued."

Section 9. Section 70-33-106, MCA, is amended to read:

"70-33-106. Notice. (1) A person has notice of a fact if:

(a) the person has actual knowledge of the fact;

(b) in the case of a landlord, the notice is delivered at the place of business of the landlord through which the rental agreement was made; ~~or~~

(c) in the case of notice of termination of a lease by a landlord for the purposes of 70-33-422(1) or 70-33-433(1)(m)(ii), the notice is served pursuant to [section 4]; or

~~(e)(d)~~ in the case of a landlord or tenant, the notice is personally delivered to the landlord or tenant or mailed with a certificate of mailing or by certified mail to the place held out by the landlord or tenant as the place for receipt of the communication or, in the absence of a designation, to the landlord's or tenant's last-known address. When notice is made by certificate of mailing or certified mail, the service of the notice must be considered to have been made 3 days after the date of mailing.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction on behalf of the organization and, in any event, from the time the notice would have been brought to the individual's attention if the organization had exercised reasonable diligence."

NEW SECTION. **Section 10. Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 25, chapter 3, part 5, and the provisions of Title 25, chapter 3, part 5, apply to [section 4].

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